

**ANNUAL REPORT
To the Commissioner
Department of Environmental Protection
July 1, 2005 -- June 30, 2006
FY 2006**

I. Introduction

The Board of Underground Storage Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, 1990, 1992, 1997, 2001, and 2002. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to ensure the highest degree of professional conduct on the part of underground oil storage tank installers and inspectors and to assure the availability of underground oil storage tank installations and inspections of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil storage tank installation and inspection services."

Thus, the Board has three major responsibilities: (1) certifying underground oil tank installers, underground gasoline tank removers, and underground oil storage tank inspectors; (2) managing and accrediting continuing education for certified underground tank installers, removers, and inspectors; and (3) taking disciplinary actions against installers, removers, and inspectors who violate its enabling statutes and rules. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA §10004(6)). This report is designed to fulfill that mandate for FY 2005/06. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Newsletter;
- Data Management; and
- Financial Statement

II. Membership and Staffing

Members of the Board are as follows:

- Alison Smith, Chair (Public Member) - Term expires 12/31/2008 (second term).
- Paul Bosse, (Maine Oil Dealers' Association) - Term expires 12/31/2006 (second term).
- Kenneth Dixon (Maine Fire Chief's Association) – Term expires 12/31/2008 (second term).
- Brian McLaughlin (Certified Tank Inspector) – Term expires 12/31/2007.
- George Seel, (Department of Environmental Protection (DEP)) - Term expires 12/31/2008.¹
- Lawrence Winchester, (Certified Tank Installer) - Term expires 12/31/2007 (second term).
- (Vacant) (Public Member) - Term expires 12/31/2007.

Clifford Buuck, a public member whose term expired December 31, 2004, could not serve another term due to conflicts with his work schedule. We continue to search for someone to replace Mr. Buuck as a public member.

James Hynson and Theresa Scott continued to provide staffing to the Board. Staff from the Department of Environmental Protection provided additional sporadic support, including Butch Bowie, Doris Breton, Sara Brusila, Sharon Ingalls, Andrew Flint, Diana McLaughlin, Peter Moulton, Tim Rector, and Ted Scharf. Dennis Harnish and Mary Sauer provided support from the Office of the Attorney General.

III. New Certifications and Testing

This section includes discussions on (A) number of installers and inspectors certified, (B) written and oral exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

A. Number of Installers and Inspectors Certified

The number of certified installers is eighty-nine (89) compared to eighty-four (84) that were certified at the end of FY 2004/2005. At present, this includes 85 who hold Class 2 Oil Tank Installer Certificates, and four (4) Class 3 Oil Tank Installers. Two (2) individuals passed the Class 2 installer final examination and became certified as Class 2 installers. An additional two (2) passed the Class 3 installer final examination and became certified as Class 3 installers. The Board reinstated one Class 2 installer whose certificate had not been renewed previously as a result of an enforcement action. While too early to indicate a trend, this increase in the number of installers, which has occurred for only the fourth time since 1989, is encouraging.

Maine currently has thirty-five (35) certified underground tank inspectors. In addition to the twenty-eight (28) underground tank inspectors² that became certified in previous years, seven (7) qualified as new inspectors this year. One (1) inspector whose certificate lapsed reapplied and passed the examination again. One inspector's certificate lapsed and he has not reapplied. There are no underground gasoline tank removers in Maine.

Based upon four (4) cycles of inspections required by statute, and the trend in application and certification of inspectors, an adequate number of inspectors to perform the required inspections will exist. Interest continues in applying for inspector certification. While the number of underground storage tank installers did increase last year, the Board remains concerned that enough installers remain available to meet demand for their services, especially as the State's population of both installers and underground oil

¹ By statute, the representative from the Department of Environmental Protection has no limit on the number of terms they may serve.

² A recheck of the annual report for 2004-05 indicated Table 1 of that report in error; only four (4) applicants passed the April 6, 2005 examination, not five (5).

storage facilities continue to age. The Board's reaction to this potential problem will be discussed in the "Program Development" section, below.

B. Written and Oral Exams

The Board offered three (3) written examinations and one (1) oral examination³ in FY 2005/06. Table 1 provides those results.

Examination	Inspector		Initial Installer		Class 2 Final		Class 3 Final		Remover		Total	
Date	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail
Dec. 7, 2005	6	13	1	1	2	0	0	0	0	0	9	14
March 30, 2006	3	4	0	1	0	1	2	0	1	0	7	6
Total	9	17	1	2	2	1	2	0	1	0	16	20

Table 1. Results of written and oral examinations offered by the Maine Board of Underground Storage Tank Installers, FY 2005/06.

The Board continued its effort to revise the initial tank installer examination and study packet. Questions are being revised to address updates in study materials and to more closely follow general format recommendations for multiple choice questions. A similar effort was begun on the Class 2 final examination study materials and questions. Once questions are assessed, the Board hopes to better structure which materials are included in which examination.

Material involving safety requirements will be moved from the final Class 2 and 3 exams to the initial examination. Also being moved is material concerning the installation of jacketed tanks as well as questions drawn from the rules of the Board of Underground Storage Tank Installers. The current format of providing five (5) possible choices in answers is also being consolidated into a four (4) choice format.

We are also attempting to move material concerning piping installation and cathodic protection from the initial examination to the final examinations and incorporate relevant questions from the inspector examination into the final examinations. This reorganization is designed to provide an improved structure of information for the process of certifying installers.

Since a major effort was completed on the inspector examination and study packet last year, we did not modify it this year.

Revised questions are being entered into the Board's examination software for more efficient development of examinations. This software, called LXRTST 6.0™, is designed to maintain databases of questions and assemble examinations automatically by selecting individual questions from the database. Training and implementation of the software will continue into next year.

C. On-Site Exams

One applicant is eligible for an on-site examination as of March 30, 2006 for the underground gasoline tank remover certificate, the only class that still requires on-site examination for certification. We await word he has scheduled a removal for Board staff to observe.

³ A request to provide an oral reexamination and provide additional time to an applicant claiming dyslexia was granted February 18, 2005. The examination was conducted with the assistance of DEP staff on April 27, 2005.

D. Upgrades

No Class 3 underground tank installers attempted apprenticeship and testing requirements to be upgraded to Class 2 Underground Tank Installers in FY 2005/06. The Board's enabling legislation and rules provide for Class 3 installers to obtain upgrades to Class 2 if they apprentice on six (6) motor fuel installations and pass the Class 2 final examination.

E. Apprenticeships

Two (2) apprentices passed the final examination to become Class 2 installers. Two (2) apprentices for Class 3 certification also completed their apprenticeships and passed the final examination to become Class 3 installers. In addition, the one (1) individual who passed the examination this year along with five (5) others who previously became eligible for the apprenticeship program can complete their apprenticeships or undertake variance applications in order to receive full certification.

F. Variances

The 1990 amendments to the Board's enabling legislation instituted a variance process for individuals to obtain variances for the apprenticeship portion of the installer certification process (32 MRSA §10010.3-A.D; 06-481 CMR c. 3 §4.D). During FY 2005/06, the Board received no variance applications. However, one apprentice informed us we should expect one soon.

IV. Recertification and Continuing Education

Sixty-six (66) installers and twenty (20) inspectors applied for recertification and were granted full renewal certificates. Three (3) installers and one (1) inspector allowed their certificates to lapse.

Continuing education programs accredited by the Board in FY 2005/06 generally applicable to all installers and inspectors are listed in Table 2. The Board approved a total of forty-nine (49) credit hours from both program sponsor and individual installer applicants.

DEP and Board staff partnered to provide a single day workshop for certified installers, inspectors and interested parties on March 1, 2006. A total of 155 people attended this event. Based on survey results, the workshop was well received by the attendees.

V. Processing of Complaints

Disciplinary actions involving ten (10) investigations and seventeen (17) alleged violations were processed in FY 2005/06. A summary of the Board's actions in these matters is presented in Appendix A.

In addition, an installers' appeal continues in Bangor District Court regarding a Board finding for investigation 2004-01 that he accomplished some thirty-four (34) inspections while under suspension as an tank installer and while having no other supplementary qualifications that would allow him to perform such inspections. The matter is complicated by the fact it occurred during a transition period following recently enacted legislation.

Investigations 2006-05, 06, 07, and 08 resulted from remediation related excavation occurring at an active underground storage facility used for the marketing and distribution of gasoline. A long-held interpretation of both the Department of Environmental Protection and the Board of Underground Storage Tank Installers was that such activity required the presence of a certified underground tank installer. The Office of the Attorney General, however, pointed out that our interpretation was not supported by regulation. As a result, and since this practice, which has been repeated more than once and created significant threat to public safety and the environment, we understand the Department will be conducting

rulemaking in order to require the presence of a certified installer at all excavations that could threaten active underground storage tank facilities.

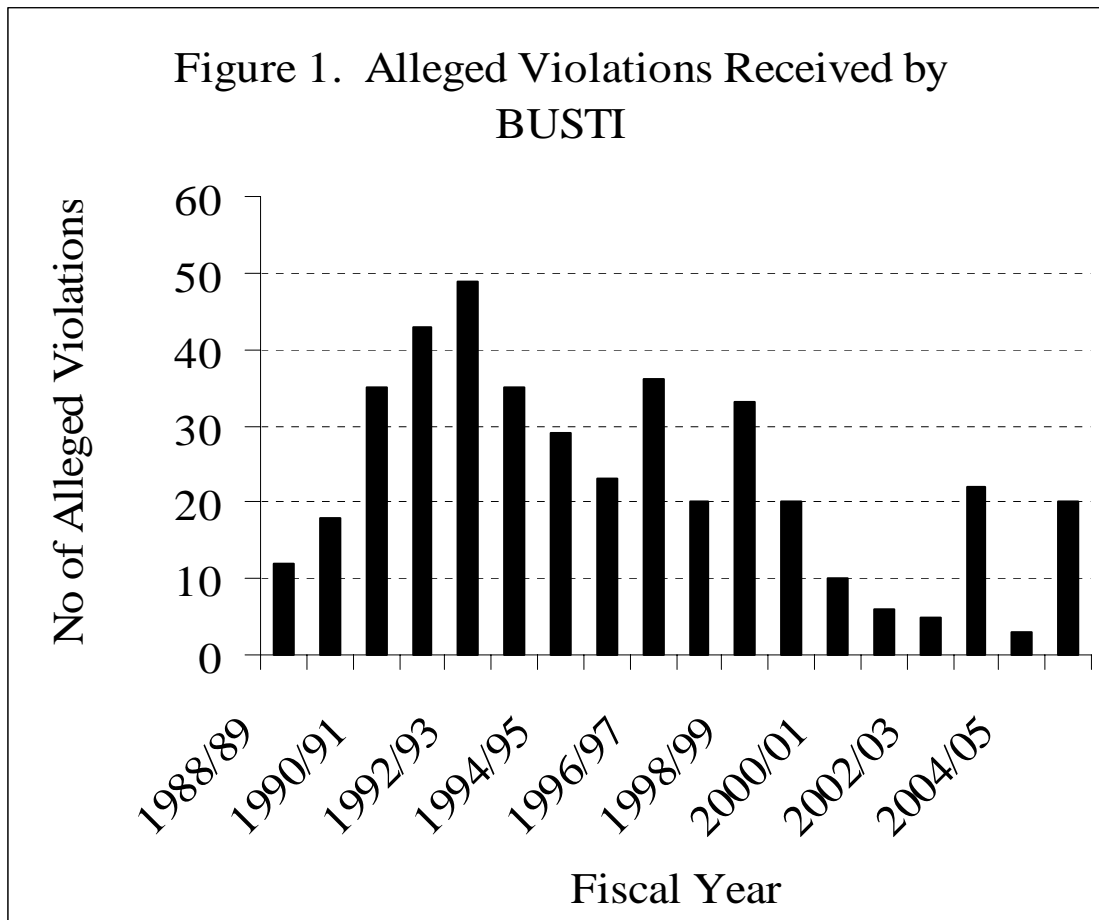
PROGRAM	SPONSOR	DATE APPRVED	HOURS
UST Cathodic Protection Tester Cert.	Steel Tank Institute	3/17/2006	6
Veeder Root Level 4 Update	John W. Kennedy Co.	3/17/2006	2
Underground Damage Prevention Sem.	Maine PUC (Installer Application)	3/17/2006	2
Winter/Spring 2006 certified UST Installer & Inspectors Training	ME DEP and BUSTI	1/20/2006	4
Hazardous Materials Site Workers(HAZWOPER)	(Installer Application)	2/2/2006	8
8 HR Hazmat Refresher Program	Safety Communications Corp	2/17/2006	3
API's Operation Underground (Renewal) Installation Segment	American Petroleum Inst	2/17/2006	3
API's Operation Underground (Renewal) Removal Segment	American Petroleum Inst	2/17/2006	2
40 HR Hazardous Materials Site Workers (HAZWOPER)	Maine Labor Group on Health	2/17/2006	8
2005 Fall Tank Installer & Inspector Program	Maine Oil Dealers Association	10/21/2005	3
Proper Installation of Fiberglass Tanks	Eastern States Associates	8/19/2005	1
Proper Installation of Ameron Pipe	Eastern States Associates	8/19/2005	2
8 Hour Hazardous Waste Operations	SafeTech Consultants	8/19/2005	2
APT On-Site Products Training	John W. Kennedy Co.	8/19/2005	2
OPW Fueling Components	John W. Kennedy Co.	8/19/2005	1

Table 2 Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 2005/06.

Table 3 provides a listing of investigations and allegations currently before the Board of Underground Storage Tank Installers as of June 30, 2006. Figure 1 shows the number of alleged violations investigated by the Board and its staff since promulgation of the Board's rules in August 1988.

<u>Principle Violation</u>	<u>Year</u>	<u>No.</u>	<u>Date Received</u>	<u>Date Sum.</u>
06-096CMR691.5.D(6-8)	2004	1	7/7/2003	8/7/2003
Various	2006	9	2/10/2006	3/9/2006
38MRSA564.1.A	2006	11	5/22/2006	6/8/2006
38MRSA564.1.B	2006	11	5/22/2006	6/8/2006
32MRSA10015.2.A	2006	12	5/24/2006	6/7/2006
32MRSA10015.2.B	2006	12	5/24/2006	6/7/2006

Table 3. Investigations active before the Board of Underground Storage Tank Installers as of June 30, 2006



VI. Program Development and Rulemaking

As noted previously, the Board continues to be concerned that the declining number of installers may soon result in a shortage of qualified people to perform repairs and retrofits to our now aging underground storage tank population. In addition, the Board wonders whether sufficient numbers of installers will be available to meet the demand when mandatory replacement requirements begin to occur in the not-too-distant future.

Based on opinions gathered informally from the regulated community, the primary deterrent to people becoming certified as installers is the requirement for six (6) underground storage tank installations during apprenticeship. That requirement was instituted prior to Maine's deadline for removal or replacement of non-compliant facilities, when good opportunity existed for applicants to participate in entire installations. Since that deadline passed, opportunities to assist on full installations significantly declined, thus the ability of applicants to complete their apprenticeships has been compromised.

Since the installation requirement is statutory (32 MRSA §10010, §§3-A), a legislative change would be required to adjust apprenticeship requirements. The Board has convened a work group of interested installers and applicants to develop a proposal for revised apprenticeship requirements and hopes to propose legislation for the 2007 legislative session.

The Board proposed amendments to Chapters 1, 3, 5, and 6 FY 2005/06. Amendments to Chapter 1 would clarify standards of practice for certified people to require them to work with the Board to resolve complaints involving violations of the Board's enabling statute.

VII. Newsletter

One of the benefits of certification of installers was the development of a newsletter to facilitate communication between the State and installers. When the inspector program was launched, distribution was expanded to include inspectors. In addition, distribution of the newsletter was expanded to UST and AST owners and renamed "Tanks in Maine." Two (2) issues of "Tanks in Maine" were published during FY 2005/06.

VIII. Data Management

A database has been generated by a contractor which is installed as a part of the Department's overall database for underground tank registration. Board staff is continuing to enter and verify the information in the system and test it for proper operation.

A home page on the Internet which includes the Board's application forms, a list of certified individuals, a description of the Board's program, and past newsletters, meeting minutes, and approved continuing education is completed and undergoing ongoing maintenance.

IX. Financial Statement

The Board's financial statement for FY 2005/06 is provided in Table 4. Income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and thus income for this year reflects the vast majority of tank installers becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low, with this year a high year. Shortfalls in BUSTI income are made up from the other income sources in the State's Groundwater Oil Cleanup Fund.

Income	(\$)
Program Income	23,641.78
Groundwater Oil Cleanup Fund	137,094.71
Total	160,736.49
Expenses:	
Personal Services	90,015.60
Fringe	48,948.14
Longevity/Overtime	2,286.40
Other	19,486.35
Total	160,736.49

Table 4. Financial statement for the Board of Underground Tank Installers, July 1, 2005 through June 30, 2006.

Respectfully submitted,

Alison P. Smith, Chair

Appendix A. Summary of FY 2005/06 Enforcement Actions (By Violation) of the Maine Board of Underground Storage Tank Installers.

Principle Violation	Year	No.	Date Received	Action Date	Board Action	Result	Fine	(Days) Susp.	Days Probation	Other	Date Closed
06-096CMR 691.4.B	2006	1	9/19/2005	1/20/2006	CA	CA				Warning	1/20/2006
06-096CMR691.11.E.1	2006	1	9/19/2005	1/20/2006	CA	CA	\$250				1/20/2006
06-096CMR691.4.C	2005	1	3/2/2005	5/20/2005	Order	Surrender				Surrender certificate	10/22/2005
06-096CMR691.5.B(2)(a)	2006	1	9/19/2005	1/20/2006	CA	CA	\$1,000				1/20/2006
06-096CMR691.App.P(2)(A)	2006	1	9/19/2005	1/20/2006	CA	CA	\$250				1/20/2006
06-096CMR691.AppE.8	2006	1	9/19/2005	10/16/2005	Dismiss	Dismiss					10/16/2005
06-096CMRc.118.3.A	2006	3	11/2/2005	1/20/2006	CA	CA	\$250				2/17/2006
06-481CMR1.4.A(1)(d)	2005	1	3/2/2005	5/20/2005	Order	Surrender				Surrender certificate	10/21/2005
06-481CMR1.4.A(1)(d)	2006	4	11/2/2005	3/17/2006	CA	CA	\$750	30			5/4/2006
06-481CMR1.4.B(1)	2006	2	10/21/2005	1/20/2006	CA	CA	\$250		180	Ed.	1/20/2006
32 MRSA 10006.1	2006	5	1/20/2006	5/19/2006	Dismiss	Dismiss					5/19/2006
32 MRSA 10006.1	2006	6	1/20/2006	5/19/2006	Dismiss	Dismiss					5/19/2006
32 MRSA 10006.1	2006	7	1/20/2006	5/19/2006	Dismiss	Dismiss					5/19/2006
32 MRSA 10015.2.A or B	2006	8	1/20/2006	4/21/2006	Dismiss	Dismiss					4/21/2006
38MRSA564.1.A	2005	2	6/27/2005	8/19/2005	CA	CA	\$1,500	30			9/16/2005
38MRSA564.1.A	2006	3	11/2/2005	1/20/2006	CA	CA	\$250				2/17/2006
38MRSA564.1.B	2006	3	11/2/2005	1/20/2006	CA	CA	\$500			Warning	2/17/2006